

GAHC010107692023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2834/2023

THE ALL ASSAM TENNIS ASSOCIATION AND 2 ORS
REPRESENTED BY ITS GENERAL SECRETARY AND TREASURE.

2: ANKUSH DUTTA
(GENERAL SECRETARY)
S/O- LATE DR R. N DUTTA ALL ASSAM TENNIS ASSOCIATION COMPLEX
CHACHAL
GUWAHATI- 781036

3: SWAPNIL BORTHAKUR
(TREASURER)
S/O- SRI GIRIN BORTHAKUR
ALL ASSAM TENNIS ASSOCIATION COMPLEX
CHACHAL
GUWAHATI- 781036

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY REVENUE AND
DISASTER MANAGEMENT DEPARTMENT GOVT. OF ASSAM, G.S -ROAD,
KHANAPARA, GUWAHATI- 781022.

2: THE JOIN SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF HOUSING AND URBAN AFFAIRS
DISPUR
GUWAHATI-06.

3: THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REPRESENTED BY CHIEF EXECUTIVE OFFICER
STATEFED BUILDING
BHANGAGARH
GUWAHATI- 781005

ASSAM.

4:THE DEPUTY COMMISSIONER AND COLLECTOR

KAMRUP(M)
ASSAM

5:THE CIRCLE OFFICER
DISPUR
KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. P K GOSWAMI

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

JUDGMENT AND ORDER
(C.A.V.)

31.05.2023

Heard Mr. P.K. Goswami, learned senior advocate, assisted by Mr. B.P. Borah, learned counsel for the petitioners. Also heard Mr. D. Saikia, learned Advocate General, assisted by Mr. R. Borpujari, learned standing counsel for the Revenue Department, Mr. P. Nayak, learned standing counsel for the GMDA, and Mr. CKS Baruah, learned Government Advocate for the State.

2. On 24.05.2023, when this matter was called in motion stage, the learned Advocate General for the State had opposed the prayer for interim relief and undertook to file affidavit-in-opposition on 25.05.2023 on behalf of the Deputy Commissioner-cum- Collector, Kamrup (M) (respondent no.4), and

accordingly, the matter was fixed for being listed in motion column on 26.05.2023 i.e. today. When the matter was called today, the Court was informed that the respondent no. 4 had filed an affidavit-in-opposition on 25.05.2023 and the petitioners had also filed its affidavit-in-reply today. Both the affidavits were called for and received from the filing section. Accordingly, with the consent of all, the matter was finally heard at the motion stage.

3. The petitioner no.1 is an association under the name and style of *All Assam Tennis Association*. By an order dated 10.06.1999, land admeasuring 5 bigha covered by Dag No. 602 of Mouza- Beltola was allotted to the petitioner no.1 association, which was followed by allotment of another 3 bigha adjoining land to the petitioner no.1 association by order dated 04.07.2003. The petitioner no.1 association, with financial assistance and other support from the Government of Assam, constructed a Tennis stadium containing 6 (six) synthetic courts with four flood-lit courts. The petitioners claim that the petitioner no.1 has 350 members, and that through 6 (six) coaches including a Head Coach provided by Alexander Waaske Tennis University, Frankfurt, the petitioner no. 1 association conducts training programmes for the benefit of youths of age group between 6 to 18 years with the requisite paraphernalia. It also holds several State and National level tennis tournaments/ events. It is projected that the said tennis stadium was put to beneficial use in the National Games 2007.

4. The grievance of the petitioners is that by the impugned order under memo no. LA.16/2023/199 dated 25.04.2023, issued by the respondent no. 4, the said authority in exercise of powers under Section 3(1) of the Assam Land (Requisition and Acquisition) Act, 1964 (hereinafter referred to as "1964

Act” for brevity) had requisitioned the land allotted to the petitioner no.1 association along with building standing thereon with effect from the date of the order, purportedly “... *for the purpose of development of Silsako Beel as a reservoir and facilitate the mitigation of urban flooding in pursuance of Department of Housing & Urban Affairs, Dispur letter No. 280916/2023/3 dated 3rd March, 2023*”.

5. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for directing the respondents to cancel/ revoke/ rescind/ set aside the said impugned order dated 25.04.2023 issued by the respondent no. 4 for eviction from the land.

6. The first contention of the learned senior counsel for the petitioners was that the condition precedent for issuance of notice under Section 3(1) of the 1964 Act not being present, the said impugned notice would stand vitiated and the requisition and notice for eviction was without jurisdiction. In this regard, it was submitted that the respondent no. 4 had acted at the dictate of others and passed the impugned order without recording his own satisfaction, and without applying his judicial mind as to the scheme for which requisition and eviction process was initiated, which is not sustainable on facts and in law. In support of the said submissions, reliance is placed on the case of *1977 AC 1014; 1976 AllER 665; AIR 1975 SC 550; and AIR 1952 SC 16*. This was countered by the learned Advocate General by submitting that under Section 3(1) of the 1964 Act, the requirement was that the Government should be satisfied, which is available and the respondent no. 4 was merely the executing authority, upon whom no duty was cast to record his satisfaction. The notice was issued as per the prescribed Form ‘B’ and ‘C’. Accordingly, it was

submitted that the cases cited by the learned senior counsel for the petitioners would have no application.

7. Secondly, it was submitted by the learned senior counsel for the petitioners that as the impugned order was bad in its inception, it does not get sanctified at a later stage, and that further proceedings consequent thereto will be non est and would have to be necessarily set aside.

8. Thirdly, it was submitted by the learned senior counsel for the petitioners that the Silsako Beel i.e. the water-body was about $1\frac{1}{2}$ to 2.00 km away from the Tennis stadium and therefore, the chances of extending the water-body up to the site of the Tennis court is remote. Moreover, as a corollary, it was submitted that it cannot be said that the petitioner no.1 had contributed to the pollution of the said water-body, or has affected its water quality. This was countered by the learned Advocate General by submitting that the studies conducted by the State Government had disclosed that as per land/revenue records, the Silsako Beel has about 1000 bighas. It was submitted that in the year 1912, the area of Silsako Beel was around 1758.47 ha² or 17.58 sq. km., which has now been significantly reduced as it appears from satellite images from the year 2003 to 05.05.2022. Hence, it was submitted that in order to mitigate urban flooding and to create water recreation facility, which is the purpose of 2008 Act, the Government of Assam, in greater public interest has taken a policy decision to preserve and rejuvenate the Silsako Beel.

9. Fourthly, it was submitted that the tennis court is of great public interest and importance because the said facility has enabled many budding players to win Tennis tournaments at the District level, State level, National level

and International level tennis events/ competitions, some of which are ranking tournaments. Hence, by requisitioning the Tennis court, the public interest would hamper, moreover, because huge funds from public exchequer have been used to create the Tennis stadium and facilities contained therein, which would all go to waste. In reply, the learned Advocate General has reiterated that the Government of Assam has taken a policy decision to preserve and rejuvenate the Silsako Beel, which is in greater public interest and to fulfill the object and purpose of the 2008 Act to mitigate urban flooding and to create water recreation facility.

10. Fifthly, it was submitted that the tennis court, which is also a recreation sports facility, and the proposed water recreation facility to be created at Silsako Beel can both harmoniously co-exist like many such facility in various parts of the Country. In response, it was submitted that the satellite image would show that at the relevant time the Government of Assam had allotted land to the petitioner no.1, which is now seen to be an integral part of the Silsako Beel. Moreover, by referring to the affidavit-in-opposition and documents annexed thereto, it has been submitted that in addition to the land allotted to the petitioner, the Government of Assam had also allotted land to 16 (sixteen) other institutions/ organizations, including Institute of Hotel Management, which is inclusive of Ginger Hotel, Assam Sahitya Sabha, The Cooperative Management, Titabar Bhawan, Koch Rajbongshi Sanmilani, High School Teacher Association, Amiyo Kumar Das Institute, All Assam Maitrayee Coordination Parishad, Hengrabari High School, Assam Tea Labour Welfare Council, Hengrabari Junior College, National Institute of Film, Television and Theatre, Residential Complex of officers of Assam Bidhan Sabha. However, in respect of three sites, the taking over possession of land is presently deferred

for the time-being as those sites are on the other side of the road, which includes Teporam Teron High School, Residential Complex of TV Centre and Veterinary Hospital. Thus, it was submitted that the eviction drive was not on pick and choose basis, but in the drive more than about 300 private structures have also been demolished so far. It has been submitted that temporary respite was given to those houses, where the students were appearing in HSLC and HSSLC examinations, and where elderly and infirm persons/ patients were residing. Therefore, it was submitted that the Tennis court of the petitioners, which falls within the core area of the Silsako Beel cannot be differently treated. In support of his submissions, the learned Advocate General has produced a copy of the study report prepared in respect of the Silsako Beel, which is retained on record.

11. Sixthly, it was submitted that it is made to appear that the action of the State to acquire/requisition land and the carrying out of eviction drive is being done purportedly under the Guwahati Waterbodies (Preservation and Conservation) Act, 2008 (hereinafter referred to as the "2008 Act" for short). In this regard, it was submitted that the State Government had allotted land to the petitioner no.1 association on 10.06.1999 and 04.07.2003 respectively and therefore, the 2008 cannot be applied retrospectively against the petitioners. In this regard, the submissions made earlier by the learned Advocate General has been reiterated.

12. In support of his submissions, the learned Advocate General has placed reliance on the case of (i) *Rupjyoti Bora Buragohain & Ors. v. The State of Assam & Ors.*, W.P.(C) 1156/2023, decided on 03.03.2023, and (ii) *Tarini Deka & Ors. v. The State of Assam & Ors.*, W.P.(C) 3989/2022, decided on

22.05.2023.

13. At the outset, it may be mentioned that despite the fact that the Government of Assam had allotted 5 bigha land on 10.06.1999 and 3 bigha land on 04.07.2003 to the petitioner no.1, but it appears that no separate settlement order was passed and therefore, the land is still a Government land and lawful title seems to have not been passed away to the petitioner.

14. It is also noted that the learned coordinate Bench of this Court, while deciding the case of *Rupjyoti Bora Buragohain (supra)*, had made the following observations:-

46. This Court may take judicial notice of the fact that artificial floods have almost become a routine in this City of Guwahati where, after a heavy shower, the entire city is inundated and reduction of Waterbodies in the Guwahati is one of the main reasons for same. As indicated above, the satellite pictures for different periods placed before this Court would really indicate a shocking state of affairs wherein a huge water body has been turned almost to a drain. The said satellite pictures (3 in nos.) are made part of the records. While dismissing these writ petitions, this Court is also of the view that as stated by the learned Advocate General of the State, the present eviction drive may be set as an example for initiating such drives to clear all Waterbodies, especially in and around Guwahati, including the Deepor Beel. Illegal encroachment in the hills in and around the Guwahati is also to be made encroachment free with stricter steps against cutting of hills and de-forestation.

47. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the present may not be fit cases for interference, as a much greater go involving public interest is being sought to be achieved wherein this Court has noticed any apparent aberration of law. In view of the same, the writ petitions were dismissed.

48. At this stage, this Court has also given some thought to the individual hardship of serious nature. Though specific pleadings are not there in the petitions, it has submitted that wards and children of some petitioners in the locality are having their annual examinations, including the HSLC and Higher Secondary/Class-XII examination. This Court has also indicated that hardships may also be in the form of some petitioners who are suffering from serious ailments and are not able to shift immediately. For those cases, liberty is given to the petitioners to approach individually the authorities in question by submitting written representations with supporting documents with an undertaking to vacate the encroached lands on or before 10.04.2023 and if such step is taken within 15.03.2023, the same may be considered and a reasonable time be granted to vacate the land under their possession. This liberty, however cannot be extended for an indefinite time."

15. Thus, this Court has taken notice of the hard reality that there has been a drastic reduction of area of water-bodies in Guwahati, which is leading to rain water flooding. This Court had felt the necessity of eviction drives to clear water-bodies in Guwahati. We are not persuaded to take a view contrary to what has been taken by the learned coordinate Bench, rather, we respectfully agree to the view taken by the said learned Bench.

16. It may also be mentioned herein that the land covered by Dag No. 602, a part of which was allotted to the petitioner no.1 is included in Schedule-III appended to the 2008 Act. The said Act was enacted to provide for preservation, protection, conservation, regulation and maintenance of waterbodies and to develop the waterbodies into natural water reservoir and convert into eco-tourism recreation centre to suit the ecological balance within the jurisdiction of Guwahati Metropolitan Development Authority and to protect the water bodies from the encroachers and damages and the matters connected therewith or incidental thereto. Therefore, notwithstanding that the said 2008 Act came after land was allotted to the petitioner no.1, yet in order to give effect to the intent and purport of the said 2008 Act, on issuance of notice dated 25.04.2023, it cannot be said that the respondent authorities are giving retrospective effect to the said 2008 Act. The inclusion of land covered by Dag No.602 in Schedule to the 2008 Act has not been assailed. The said 2008 Act remains prospective for all intents and purpose. However, the Government has initiated requisition proceeding under 1964 Act. The requisition proceeding cannot be said to be not tenable because of the fact that in land revenue records, the land is still a Government land as because the said land was never settled in favour of the petitioner.

17. The provisions of Section 3(1) of 1964 Act is quoted below:-

3. Power to requisition. - (1) *If in the opinion of the State Government or any person authorised in this behalf by the State Government it is necessary so to do, for maintaining supplies and services essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion measures including embankment and drainage or for providing land individually or in groups to landees, flood affected or displaced persons, or to a society registered under the [Assam Co-operative Societies Act, 1949](#) (Assam Act I of 1950), or a company incorporated under the Companies Act, 1956 (Act I of 1950), or a company incorporated under the [COMPANIES ACT, 1956](#) (Act I of 1956), formed for the benefit and rehabilitation of landless, flood affected or displaced persons [or to provide land for the purpose of construction of border fencing and allied works, including border roads and check posts connected therewith, along Bangladesh border] the State Government or the person so authorised, as the case may be, may by order in writing, requisition any land and may make such further orders as appear to it or to him to be necessary or expedient in connection with the requisitioning.*

18. From the text of Section 3(1) of the 1964 Act, the Court is of the considered opinion that the satisfaction of the Government is sufficient to initiate the process of requisition and acquisition of land in exercise of power under Section 3(1) of the 1964 Act and thus, the Court is of the considered opinion that the Deputy Commissioner-cum- Collector, Kamrup (M) District (respondent no.4) is not required to record his personal satisfaction before issuing notice under Section 3(1) of the 1964 Act. Moreover, it is mentioned in the impugned order dated 25.04.2023 that "*In exercise of the powers conferred on me under section 3(1) of the Assam Land (Requisition and Acquisition) Act, 1964 (Act XV of 1964) under Notification No. RLA.81/93/5-A dated Dispur, the 15th day of July, 1993. I, Shri ...*". Thus, the said impugned order discloses that the respondent no. 4 had been vested with the power and authority to issue notification under Section 3(1) of the 1964 Act. Therefore, the Court is of the considered opinion that (i) the respondent no. 4 was not required to record his satisfaction before issuing the impugned order dated 25.04.2023, as has been

projected by the learned senior counsel for the petitioners; (ii) the learned Advocate General has referred to the communication under Memo no. 280916/2023/3 dated 03.03.2023 by the Joint Secretary to the Govt. of Assam, Department of Housing & Urban Affairs to the respondent no. 4 for starting the acquisition proceedings in respect of the 17 nos. of institutions/ organizations as per the regulations, there is no infirmity in the steps taken by the respondent no. 4 to initiate requisition as well as eviction proceeding vide the impugned order dated 25.04.2023, without recording his satisfaction as to the tenability or otherwise of the scheme for which requisition and acquisition drive was initiated. Therefore, the Court is unable to accept the contention of the learned senior counsel for the petitioner that the initial order dated 25.04.2023 was bad and/or unsustainable on facts and in law and that accordingly, the Court is of the considered opinion that no subsequent steps taken by the respondent no. 4 can be held to be bad, illegal, unsustainable and/or void *ab initio*.

19. Thus, if the action of the respondents in issuing the impugned requisition notice dated 25.04.2023 in Form-B is not found to be vitiated in any manner, the consequential direction by respondent no. 4 to the petitioner no.1 to hand over possession in connection with LA.16/2023 by issuing notice under Form-C of the 1964 Act cannot be held to be illegal or untenable.

20. If the State Government has taken a step to implement rejuvenation of Silsako Beel in furtherance of the 2008 Act, the Court would be slow to substitute its opinion on the wisdom of the Government in matters of policy so long as the Government pays compensation for the *zirats* standing on the land in question.

21. Therefore, this writ petition fails on all counts and therefore, this

writ petition stands dismissed. There shall be no order as to cost.

22. Before parting with the records, it is made clear that this judgment shall not come in the way of the Government to consider representation, if any, submitted by the petitioner no.1 for an alternative land, which shall be considered, either positively or otherwise, in its own merit without being influenced by this order, and without treating this observation as a direction of this Court.

JUDGE

Comparing Assistant